

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**AUG 26 2003**

CATHY A. CATTERSON

U.S. COURT OF APPEALS

JENNIFER CAIN,

No. 02-56070

Plaintiff - Appellant,

D.C. No. CV-00-02337-NAJ

v.

MEMORANDUM\*

JO ANNE B. BARNHART, Commissioner of  
Social Security,

Defendant - Appellee.

Appeal from the United States District Court  
for the Southern District of California  
Napoleon A. Jones, District Judge, Presiding

Submitted June 4, 2003\*\*  
Pasadena, California

Before: THOMAS, PAEZ, Circuit Judges, and REED, District Judge.\*\*\*

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Edward C. Reed, Jr., Senior District Judge for the District of Nevada, sitting by designation.

Jennifer Cain (“Cain”) appeals from the district court’s summary judgment in favor of the Commissioner of Social Security (“Commissioner”). The district court affirmed the decision of the Administrative Law Judge (“ALJ”) denying Cain Social Security Income (“SSI”) benefits under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381 *et seq.* The ALJ concluded, on the basis of step five in the five-step sequential analysis in 20 C.F.R. § 404.1520(a)–(f), that Cain was not “disabled” within the meaning of the Act, 42 U.S.C. § 1382c, because she retained the residual functional capacity to perform “a significant number of jobs available within the regional and national economies.”

Cain contends on appeal that the ALJ should have accorded greater weight to the opinions of her treating and examining physicians and that he erred by not considering the effect of her chronic obesity on her residual functional capacity. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review *de novo* the district court’s decision affirming the ALJ, *Benton v. Barnhart*, 331 F.3d 1030, 1035 (9th Cir. 2003), and we reverse and remand for an award of benefits.

## I.

The ALJ rejected the opinions of Drs. Dimitman and Weissbein, Cain’s treating physicians, and the opinion of Dr. Grier, an examining physician, who concluded that Cain was markedly impaired in her occupational and social

functioning and essentially unable to work, in favor of the opinion of Dr. Bolter, a non-examining, non-treating physician, who testified that Cain retained the residual functional capacity to perform simple repetitive tasks that do not involve public contact and that require only minimal contact with peers and supervisors. We conclude that the ALJ erred by according greater weight to the opinion of a non-examining, non-treating physician than to the opinions of Cain's treating and examining physicians without providing "specific" and "legitimate" reasons supported by "substantial evidence in the record" for doing so. *See Lester v. Chater*, 81 F.3d 821, 830–31 (9th Cir. 1996).

In rejecting Dr. Grier's and Dr. Dimitman's opinions, the ALJ concluded that Cain's "reported activities" were inconsistent with "a marked limitation in her ability to adapt to a work setting" and with "serious" impairment in social and occupational functioning. The ALJ listed Cain's reported activities as "care of all personal needs, care for her young son, cooking, cleaning, grocery shopping, reading, watching television and local driving."

In reviewing the record *as a whole*, *see Ghokassian v. Shalala*, 41 F.3d 1300, 1303 (9th Cir. 1994), we conclude that the ALJ's conclusion was not supported by substantial evidence in the record. Indeed, the evidence indicated that Cain went grocery shopping once per month with assistance, "does what she

can” with household chores but mostly received assistance from her husband, received rides from her husband when she needed to leave the house (she has blackouts that preclude her from driving), read very little, and received significant help from her husband in caring for her son and from her son himself who tried “to help with everything.” *Cf. Rollins v. Massanari*, 261 F.3d 853, 861–62 (9th Cir. 2001) (Ferguson, J., dissenting) (noting that the ALJ misconstrued the evidence about the extent of the claimant’s daily activities, and in doing so, “essentially penalize[d] [the claimant] for making an effort to cope with her pain and be a mother to her sons”); *Reddick v. Chater*, 157 F.3d 715, 722–23 (9th Cir. 1998) (noting that the ALJ’s “paraphrasing of record material [was] not entirely accurate regarding the content or tone of the record”). “The Social Security Act does not require that claimants be utterly incapacitated to be eligible for benefits, . . . and many home activities are not easily transferable to what may be the more grueling environment of the workplace, where it might be impossible to periodically rest or take medication.” *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989); *see also Reddick*, 157 F.3d at 722 (“[D]isability claimants should not be penalized for attempting to lead normal lives in the face of their limitations.”); *Smolen v. Chater*, 80 F.3d 1273, 1284 n.7 (9th Cir. 1996) (citing *Fair*). The ALJ therefore

erred by concluding that Cain's "reported activities" were inconsistent with her physicians' opinions that she was disabled and unable to work.

In addition, the ALJ provided the following reason for crediting Dr. Bolter's testimony and excluding each of Cain's treating and examining physicians' opinions: "The Undersigned finds the opinions of the State agency consultants to be consistent with the objective evidence of record for the period at issue." The ALJ may not reject the opinions of Cain's treating and examining physicians without providing "'specific and legitimate' reasons supported by substantial evidence in the record for so doing." *Lester*, 81 F.3d at 830. Here, the ALJ's conclusory statement about objective evidence in the record (to which he did not point) was not a "specific and legitimate" reason for crediting Dr. Bolter's testimony and discrediting the opinions of Drs. Dimitman, Grier, and Weissbein. Indeed, Drs. Dimitman, Grier, and Weissbein all opined that Cain had marked impairments in her social and occupational functioning rendering her unable to work. The ALJ failed to provide clear and convincing reasons for rejecting these conclusions. *See Benton*, 331 F.3d at 1036 ("'Clear and convincing' reasons are required to reject the treating doctor's ultimate conclusions." (citing *Lester*, 81 F.3d at 830)).

We find it significant that the GAF score of 45 that Dr. Grier assigned to Cain was uncontroverted in the record. A GAF score of 45 means that an individual has, in relevant part, “any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job).” *Diagnostic and Statistical Manual of Mental Disorders* 32 (4th ed. 1994). The ALJ recognized that a GAF score of 45 “is consistent with disabling limitation,” and the vocational expert testified that, with a GAF score of 45, Cain would be unable to work. The ALJ failed to provide “clear and convincing” reasons, *see Benton*, 331 F.3d at 1036; *Lester*, 81 F.3d at 830, for rejecting Dr. Grier’s assessment, and we conclude that it supports a finding of disability.

## II.

“The decision whether to remand a case for additional evidence or simply to award benefits is within the discretion of the court.” *Reddick*, 157 F.3d at 728. “Where the record is complete, however, we award benefits to the claimant.” *Ramirez v. Shalala*, 8 F.3d 1449, 1455 (9th Cir. 1993). We conclude that, had the ALJ properly credited the opinions of Cain’s treating and examining physicians, then she would have been entitled to SSI benefits as a matter of law. *Cf. Reddick*, 157 F.3d at 729 (“We do not remand this case for further proceedings because it is clear from the administrative record that Claimant is entitled to benefits.”);

*Ghokassian*, 41 F.3d at 1304 (awarding benefits where the ALJ “improperly discounted the opinion of the treating physician”); *Winans v. Bowen*, 853 F.2d 643, 646–47 (9th Cir. 1988) (awarding benefits where the ALJ rejected the treating physician’s opinion that the claimant was disabled and unable to engage in substantial gainful activity without supporting the rejection with specific reasons supported by substantial evidence in the record). Accordingly, we reverse the judgment of the district court and remand with instructions to remand the case to the Commissioner for an award of benefits.<sup>1</sup>

REVERSED and REMANDED.

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<sup>1</sup> Due to our disposition in this case, we need not reach Cain’s alternative argument that the ALJ erred by not considering the effect of her chronic obesity on her residual functional capacity.